

JUN 23 2011

**Board of Vocational Nursing
and Psychiatric Technicians**

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9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2009-72

13 **MA AILAINÉ FRANCISCO OMILLO**
8281 Holder Street
14 Buena Park, CA 90620

A C C U S A T I O N

15 **Vocational Nurse License No. VN 222582**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about August 30, 2006, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 222582 to Ma Ailaine Francisco
25 Omillo (Respondent). The Vocational Nurse License expired on April 30, 2010, and has not been
26 renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
3 may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

4 As used in this section, "license" includes "certificate," "permit," "authority,"
5 and "registration."

6 9. Section 2859 of the Code states:

7 The practice of vocational nursing within the meaning of this chapter is the
8 performance of services requiring those technical, manual skills acquired by means of
9 a course in an accredited school of vocational nursing, or its equivalent, practiced
under the direction of a licensed physician, or registered professional nurse, as
defined in Section 2725 of the Business and Professions Code.

10 A vocational nurse, within the meaning of this chapter, is a person who has met
11 all the legal requirements for a license as a vocational nurse in this State and who for
12 compensation or personal profit engages in vocational nursing as the same is
hereinabove defined.

13 10. Section 2860.5 of the Code states:

14 A licensed vocational nurse when directed by a physician and surgeon may do
15 all of the following:

16 (a) Administer medications by hypodermic injection.

17 (b) Withdraw blood from a patient, if prior thereto such nurse has been
18 instructed by a physician and surgeon and has demonstrated competence to such
19 physician and surgeon in the proper procedure to be employed when withdrawing
blood, or has satisfactorily completed a prescribed course of instruction approved by
the board, or has demonstrated competence to the satisfaction of the board.

20 (c) Start and superimpose intravenous fluids if all of the following additional
conditions exist:

21 (1) The nurse has satisfactorily completed a prescribed course of instruction
22 approved by the board or has demonstrated competence to the satisfaction of the
board.

23 (2) The procedure is performed in an organized health care system in
24 accordance with the written standardized procedures adopted by the organized health
25 care system as formulated by a committee which includes representatives of the
26 medical, nursing, and administrative staffs. "Organized health care system," as used
27 in this section, includes facilities licensed pursuant to Section 1250 of the Health and
28 Safety Code, clinics, home health agencies, physician's offices, and public or
community health services. Standardized procedures so adopted will be reproduced in
writing and made available to total medical and nursing staffs.

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11. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

(h) Impersonating another practitioner, misrepresenting professional credentials or licensure status, or permitting another person to use his or her certificate or license.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee. . . .

12. Section 2878.6 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

13. Section 2878.8 of the Code states:

The board may deny any application or may suspend or revoke any license issued under this chapter [the Vocational Nursing Practice Act] based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline.

14. Section 2885 of the Code states:

It is unlawful for any person or persons not licensed as provided in this chapter to impersonate in any manner or pretend to be a licensed vocational nurse, or to use the title "Licensed Vocational Nurse," the letters "L.V.N.," or any other name, word or symbol in connection with or following his name so as to lead another or others to believe that he is a licensed vocational nurse.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

16. California Code of Regulations, Title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

COSTS

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL ALLEGATIONS

18. Respondent began employment with Medicare Plus Home Health Providers, (hereinafter "Medicare Plus"), a home health agency¹ some time prior to March 2006. Respondent was not a licensed vocational nurse at the time she applied for employment with Medicare Plus, or at any time when she committed the acts described herein.

19. Excel Plus Home Health Services (Excel Plus) and/or Unicare Health Professional (Unicare) were entities that Medicare Plus utilized to pay unlicensed individuals, such as Respondent, who were providing private duty nursing services to sick patients, many of them

¹ A home health agency (HHA) provides medical and non-medical care that is paid for with public or private funds.

1 children, who were beneficiaries of Medi-Cal. Medi-Cal provides reimbursement for medically
2 necessary health care services to indigent persons in California.

3 20. The California Department of Justice (DOJ) Bureau of Medi-Cal Fraud and Elder
4 Abuse (BMFEA) conducted an investigation into the activities involving Medicare Plus, Excel
5 Plus, and Unicare. The BMFEA investigation revealed that Respondent prepared documentation
6 of her visits (using route sheets and/or nursing notes) with the signature lines intentionally left
7 blank, knowing that another co-conspirator would sign the name of an actual licensed vocational
8 nurse to make it appear that a licensed LVN had made the visit, and that Medicare Plus would
9 seek reimbursement from Medi-Cal for an LVN's visit, rather than for the visit Respondent had
10 actually made.

11 21. On multiple occasions in 2006, specifically between March 2006 and August 2006,
12 prior to her licensure as an LVN, Respondent made patient visits and presented herself as an
13 LVN, and performed services that Respondent knew should have been performed by an LVN.
14 Respondent admitted that among her duties, she administered medications through gastric feeding
15 tubes, cleaned gastric feeding tubes, employed the use of a suction machine, and monitored
16 ventilators. Respondent was not trained or licensed to perform these services.

17 22. On or about March 24, 2006, Respondent made a visit to patient L.C. On or about the
18 same date, Respondent submitted to supervisors her home-nursing route sheets and nursing notes
19 for the visit to patient L.C. with her signature lines intentionally left blank. On or about April 20,
20 2006, Respondent received payment by Unicare for her alleged visit to patient L.C. on March 24,
21 2006, even though she was not a licensed vocational nurse.

22 23. On or about April 19, 2006, Respondent and her co-conspirators caused to be
23 submitted to Medi-Cal a claim for payment for LVN services provided on March 24, 2006, in the
24 amount of \$470.56.

25 24. Investigators from the BMFEA interviewed the Director of Nursing (DON) of Excel
26 Plus, who also became the Director of Nursing for Medicare Plus when the owner's registered

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1 nurse license was suspended.² The DON told investigators that Medicare Plus knowingly hired
2 unlicensed persons to conduct vocational nursing duties, and that the unlicensed persons were
3 aware that they would be performing the functions of a vocational nurse when they were hired.

4 25. As a result of the investigation, 44 people employed by Medicare Plus and Excel Plus
5 were arrested in one of the largest Medi-Cal fraud cases in California history. According to the
6 federal indictment, unlicensed and unqualified individuals, many of whom were not U.S. citizens,
7 were sent to private homes to provide nursing services to sick and disabled children across Los
8 Angeles. The agencies would pay the unlicensed individuals \$8 to \$12 an hour but would bill the
9 State of California up to \$35 an hour, per nurse.

10 FIRST CAUSE FOR DISCIPLINE

11 **(November 8, 2010 Federal Criminal Conviction for Health Care Fraud)**

12 26. Respondent has subjected her license to disciplinary action under sections 490 and
13 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
14 related to the qualifications, functions, and duties of a licensed vocational nurse. The
15 circumstances are as follows.

16 a. Based on the allegations set forth in paragraphs 18-25, above, on or about
17 November 8, 2010, in a criminal proceeding entitled *United States of America vs. Ma Ailaine*
18 *Francisco Omillo*, in U.S. District Court, Central District of California, case number CR 09-
19 00609-GAF-3, Respondent was convicted on her plea of guilty of violating Title 18 United States
20 Code section 1347. Respondent admitted that: (a) Respondent knowingly and willfully executed
21 or participated in a scheme to defraud or obtain money from a health care benefit program by
22 submitting false and fraudulent claims to that program; (b) Respondent knew that the claims
23 being submitted to the health care benefits program were false and fraudulent; (c) the false and
24 fraudulent claims were material, in that they would reasonably influence the health care benefits
25 program to pay money to which the provider was not legitimately entitled; (d) Respondent acted
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27 ² The owner of Medicare Plus, Priscilla Villabroza, was convicted in 2008 of five counts of
28 healthcare fraud in federal district court.

1 with the intent to defraud; and (e) the false and fraudulent claims were made in connection with
2 the delivery of, or payment for, health care benefits, items or services.

3 b. As a result of the conviction, on or about November 8, 2010, Respondent was
4 sentenced to two years probation and ordered to pay restitution to her victims in the amount of
5 \$13,909.80.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Impersonating a Licensed Vocational Nurse)**

8 27. Respondent is subject to disciplinary action under section 2878, subdivision (h) for
9 unprofessional conduct in that on or between March 2006 and August 2006, as described in
10 paragraphs 18-25, above, Respondent misrepresented her professional credentials and licensure
11 status when she administered medications into a disabled child's gastric feeding tube, she
12 maintained the tube, she monitored ventilators, and she employed the use of a suction machine,
13 all without the benefit of a nursing license.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct – Violation of Codes)**

16 28. Respondent is subject to disciplinary action under section 2878, subdivision (d) of the
17 Code for unprofessional conduct in that Respondent's actions, as described in paragraphs 18-25,
18 above, demonstrate her direct participation in and her conspiracy to violate provisions and terms
19 of the Business and Professions Code relating to the practice of vocational nursing. Specifically,
20 Respondent practiced vocational nursing without a license in violation of section 2859 of the
21 Code, Respondent held herself out as a vocational nurse in violation of section 2885 of the Code,
22 and Respondent performed the duties outside the scope of a licensed vocational nurse, without
23 benefit of a nursing license, in violation of section 2860.5 of the Code.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Dishonest Acts)

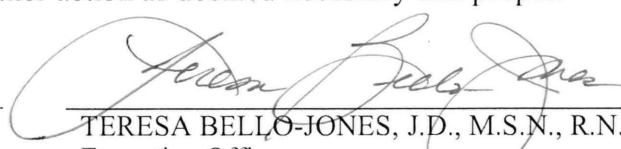
29. Respondent is subject to disciplinary action under section 2878, subdivision (j) of the Code in that Respondent's actions, as described in paragraphs 18-25, above, were dishonest and involved moral turpitude in that she admitted to defrauding the State of California and the government of the United States.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 222582, issued to Ma Ailaine Francisco Omillo;
2. Ordering Ma Ailaine Francisco Omillo to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 23, 2011



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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